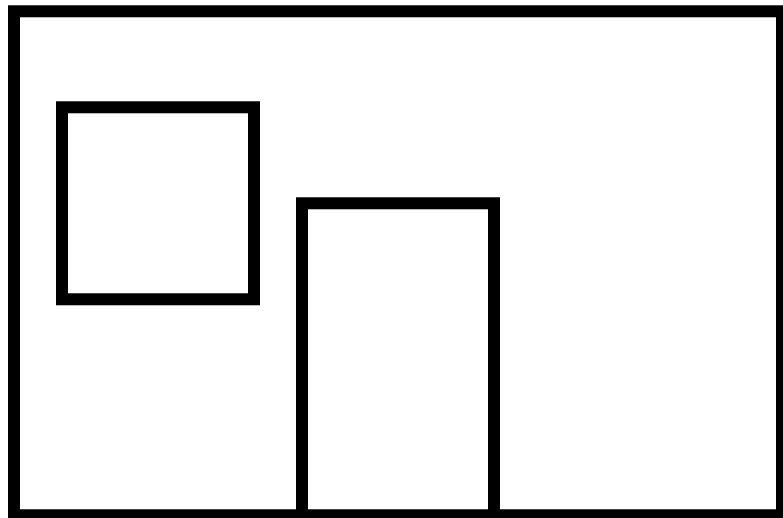


## **Module III.      Acquired Brain Injury Eligibility Determination Guide**

**“The most beautiful thing we can experience is the mysterious.” (Albert Einstein)**



**Instructions to This Module:**

- This module is designed to be interactive. It only is able to reflect the tools in regards to ABI eligibility determination. Every eligibility determination process is different (depending on the person). Eligibility can be considered a fine art.
- The topic “Eligibility Determination” is further discussed in the Certification Training given at the State Office in Salt Lake City.
- You are highly encouraged to discuss the ABI Eligibility Determination Process with your:
  - a) Supervisor
  - b) ABI Program Manager, Rolf M. Halbfell (contact number is (801) 538-8244)
  - c) ABI Program Director, Susan Macnamara (contact number is (801- 374-7815), or with
  - d) Eligibility Specialist, Alan Tribble (contact number is (801)-538-4351)

**Objectives of This Module:**

- a) Become familiar with the eligibility determination process.
- b) Become familiar with the Administrative Rule relating to eligibility.
- c) Understand the term “related conditions.”
- d) Become familiar what to look for in a case scenario.

## Eligibility Criteria

The eligibility criteria for Non-Waiver Brain Injury Services; and Brain Injury Waiver Services can be found in the Administrative Rule (R 539-1-8 and 9). Additional eligibility criteria is found on the ABI Waiver Template.

The new ABI Eligibility Criteria (dated 07/01/2004) for both waiver and non-waiver services is not only documented in the actual ABI Waiver template, but is further documented in Administrative Rule. Click on the links listed below to review the Division's most current eligibility rules.

[R539-1-8. Eligibility for Non-Waiver Brain Injury Services.](#)

[R539-1-9. Eligibility for Acquired Brain Injury Waiver Services.](#)

[R539-1-10. Graduated Fee Schedule.](#)

## **Acquired Brain Injury Waiver Template “Language.:(State Implementation Plan effective July 1, 2004).”**

A waiver of section 1902(a)(10)(B) of the Act is also requested in order to impose the following additional targeting restrictions (specify):

- a. ☒ Waiver services are limited to the following age groups (specify):  
  
18 years of age and older
- b. ☒ Waiver services are limited to individuals with the following disease(s) or condition(s) (specify):
  - i. Acquired brain injury defined as being injury related and neurological in nature, and includes cerebral vascular accident. Acquired brain injury does not include individuals whose primary diagnosis is mental illness, substance abuse, or individuals with deteriorating diseases such as multiple sclerosis, muscular dystrophy, Huntington’s chorea, ataxia, or cancer.
  - ii. Individual score between 40 and 120 on the Brain Injury Waiver Comprehensive Assessment Form.
  - iii. This waiver is not available to individuals who have mental retardation or other related conditions as defined in 42 CFR 483.102(b)(3) and 42 CFR 435.1009.

**The following paragraph is new in the ABI Waiver:**

“This waiver is not available to individuals who have mental retardation or other related conditions as defined in 42CFR483.102(b)(3) and 42CFR435.1009.”

**What is a “related condition”?**

“Related conditions” is defined in Federal Law 42CFR435.1009

[Code of Federal Regulations]

[Title 12, Volume 1]

[Revised as of January 1, 2003]

From the U.S. Government Printing Office via GPO Access

[CITE: **42CFR435.1009**]

[Page 162-164]

TITLE 42--PUBLIC HEALTH

CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF  
HEALTH AND HUMAN SERVICES--(Continued)

PART 435--ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA  
ISLANDS, AND AMERICAN SAMOA--Table of Contents

Subpart K--Federal Financial Participation

Sec. 435.1009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

Persons with related conditions means individuals who have **a severe, chronic disability** that **meets all of the following conditions**: (a) It is attributable to

(1) Cerebral palsy or epilepsy; or  
(2) Any other condition, other than mental illness,  
found to be closely related to mental retardation because this condition results in  
impairment of **general intellectual functioning** or adaptive behavior  
similar to that of mentally retarded persons, and requires treatment or  
services similar to those required for these persons.

(b) It is manifested before the person reaches age 22.

(c) It is likely to continue indefinitely.

(d) results in substantial functional limitations in three or  
more of the following areas of major life activity:

(1) Self-care.

(2) Understanding and use of language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

**IMPORTANT: Do not use the criteria found in rule or on Form 19**

**NOTE: Substantial Functional Limitations must be due to the condition noted under (a) attributable to...**

Persons with related conditions means individuals who have a severe, chronic disability that meets all of the following conditions:

(a) It is **attributable to--**

- (1) **Cerebral palsy or epilepsy; or**
- (2) **Any other condition, other than mental illness, found to be closely related to **mental retardation** because **this condition** results in impairment of general **intellectual functioning** or **adaptive behavior** similar to that of mentally retarded persons, and requires **treatment or services** similar to those required for these persons.**

The “severe, chronic disability” has to be “attributable” to the identified condition(s). Some related conditions can be very mild in some individuals (F-X, CP, FAS) and ...

“Any other condition” - has to be a specific identified/diagnosed condition- Most likely qualify: Autism and lots of known causes of MR: Down’s Syndrome, Fetal Alcohol Syndrome, and Fragile -X are most common; Other brain/neurological based conditions may qualify: P-W, severe ABI/TBI, Spina Bifida,

Probably not qualify:, PDD-NOS, Tourette’s, Reactive Attachment, CHARGE  
Probably not: Medical/ physical conditions (cancer, AIDS, spinal cord injury, MD, MS)  
Asperger’s, ADHD, Conduct Disorder, Borderline Intellectual Functioning, Learning Disorders, Deaf, Blind, Substance Abuse, Mental Illness (including Psychotic, Mood & Anxiety Disorders and Personality Disorders, Paraphilias)

b) It is **manifested** before the person reaches age 22.

(c) It is **likely to continue indefinitely**.

The functional limitations must be present by age 22 years, not just the underlying condition

(d) It results in **substantial functional limitations** in three or more of the following areas of major life activity:

- (1) **Self-care.**
- (2) **Understanding and use of language.**
- (3) **Learning.**
- (4) **Mobility.**
- (5) **Self-direction.**
- (6) **Capacity for independent living.**

“substantial functional limitations” must be due to the “condition” noted in “(a)” above.

Do not use the same criteria as in DSPD Rule (Form 19/19c)

## **Additional Information on Related Conditions:**

### **Cerebral Palsy**

[http://www.ucp.org/ucp\\_generaldoc.cfm/1/9/37/37-37/447](http://www.ucp.org/ucp_generaldoc.cfm/1/9/37/37-37/447)

[http://gait.aidi.udel.edu/res695/homepage/pd\\_ortho/clinics/c\\_palsy/cpweb.htm](http://gait.aidi.udel.edu/res695/homepage/pd_ortho/clinics/c_palsy/cpweb.htm)

<http://www.urbanext.uiuc.edu/specialneeds/cp.html>

### **Epilepsy**

<http://www.epilepsynse.org.uk/pages/info/leaflets/explaini.cfm>

<http://www.urbanext.uiuc.edu/specialneeds/epilepsy.html>

### **Pervasive Developmental Disorders**

-Autism

-Rett's

-Childhood Disintegrative

-Asperger's

-Pervasive Developmental Disorders (NOS) Including Atypical Autism

Please see in "Diagnostic and Statistical Manual of Mental Disorders 4<sup>th</sup> Edition- DSM-IV"

## **Most Common Causes of Mental Retardation**

### **Down Syndrome**

<http://www.ndss.org/content.cfm?fuseaction=InfoRes.Generalarticle&article=29>

### **Fragile X**

<http://www.fragilex.org/html/what.htm>

### **Fetal Alcohol Syndrome**

<http://www.well.com/user/woa/fsfas.htm>

## **Other Conditions Closely Related to Mental Retardation**

### **Spina Bifida**

[http://www.sbaa.org/site/PageServer?pagename=ASB\\_faq](http://www.sbaa.org/site/PageServer?pagename=ASB_faq)

<http://www.urbanext.uiuc.edu/specialneeds/spinebif.html>

### **Prader -Willie Syndrome**

<http://www.pwsausa.org/faq.htm>

### **Smith-Magenis Syndrome**

[http://www.rarediseases.org/search/rdbdetail\\_abstract.html?disname=Smith%20Magenis%20Syndrome](http://www.rarediseases.org/search/rdbdetail_abstract.html?disname=Smith%20Magenis%20Syndrome)

### **Angelman Syndrome**

<http://www.ninds.nih.gov/disorders/angelman/angelman.htm>

### Williams Syndrome

<http://www.williams-syndrome.org/forparents/whatiswilliams.html>

### Tuberous Sclerosis

[http://www.ninds.nih.gov/health\\_and\\_medical/pubs/tuberous\\_sclerosis.htm](http://www.ninds.nih.gov/health_and_medical/pubs/tuberous_sclerosis.htm)

## Other Conditions

### Huntington's Disease

<http://www.neurologychannel.com/huntingtons/>

### Reactive Attachment Disorder

Please see in "Diagnostic and Statistical Manual of Mental Disorders 4<sup>th</sup> Edition- DSM-IV"

### Tourette's

Please see in "Diagnostic and Statistical Manual of Mental Disorders 4<sup>th</sup> Edition- DSM-IV"

### Multiple Sclerosis

<http://www.nationalmssociety.org/MS%20the%20Disease.asp>

### Muscular Dystrophy

<http://www.mdausa.org/disease/40list.html>

## Sample Selection of International Code of Diseases (ICD) for Brain Injury:

(The below indicated codes do not reflect all varieties of brain injury. For this manual the below codes serve the purpose of giving you some insight how brain injury is coded in the ICD).

### 348.1 Anoxic brain damage

**Excludes:**

*that occurring in:*

*abortion (634-638 with .7, 639.8)*

*ectopic or molar pregnancy (639.8)*

*labor or delivery (668.2, 669.4)*

*that of newborn (767.0, 768.0-768.9, 772.1-772.2)*

Use additional E code to identify cause

### FRACTURE OF SKULL (800-804)

The following fifth-digit sub-classification is for use with the appropriate codes in categories 800, 801, 803, and 804:

- 0 unspecified state of consciousness
- 1 with no loss of consciousness
- 2 with brief [less than one hour] loss of consciousness
- 3 with moderate [1-24 hours] loss of consciousness
- 4 with prolonged [more than 24 hours] loss of consciousness and return to pre-existing conscious level
- 5 with prolonged [more than 24 hours] loss of consciousness, without return to pre-existing conscious level
  - Use fifth-digit 5 to designate when a patient is unconscious and dies before regaining consciousness, regardless of the duration of the loss of consciousness
- 6 with loss of consciousness of unspecified duration
- 9 with concussion, unspecified

### **800 Fracture of vault of skull**

Requires fifth digit. See beginning of section 800-804 for codes and definitions.

**Includes:**

- frontal bone
- parietal bone

#### **800.0 Closed without mention of intracranial injury**

#### **800.1 Closed with cerebral laceration and contusion**

#### **800.2 Closed with subarachnoid, subdural, and extradural hemorrhage**

#### **800.3 Closed with other and unspecified intracranial hemorrhage**

#### **800.4 Closed with intracranial injury of other and unspecified nature**

#### **800.5 Open without mention of intracranial injury**

#### **800.6 Open with cerebral laceration and contusion**

#### **800.7 Open with subarachnoid, subdural, and extradural hemorrhage**

#### **800.8 Open with other and unspecified intracranial hemorrhage**

#### **800.9 Open with intracranial injury of other and unspecified nature**

### **801 Fracture of base of skull**

Requires fifth digit. See beginning of section 800-804 for codes and definitions.

**Includes:**

- fossa:
  - anterior
  - middle
  - posterior
  - occiput bone
  - orbital roof
- sinus:
  - ethmoid
  - frontal
  - sphenoid bone
  - temporal bone



- 801.0 Closed without mention of intracranial injury
- 801.1 Closed with cerebral laceration and contusion
- 801.2 Closed with subarachnoid, subdural, and extradural hemorrhage
- 801.3 Closed with other and unspecified intracranial hemorrhage
- 801.4 Closed with intracranial injury of other and unspecified nature
- 801.5 Open without mention of intracranial injury
- 801.6 Open with cerebral laceration and contusion
- 801.7 Open with subarachnoid, subdural, and extradural hemorrhage
- 801.8 Open with other and unspecified intracranial hemorrhage
- 801.9 Open with intracranial injury of other and unspecified nature

**Other 803 skull fractures**

Requires fifth digit. See beginning of section 800-804 for codes and definitions.

**Includes:** and unqualified

skull NOS

skull multiple NOS

- 803.0 Closed without mention of intracranial injury
- 803.1 Closed with cerebral laceration and contusion
- 803.2 Closed with subarachnoid, subdural, and extradural hemorrhage
- 803.3 Closed with other and unspecified intracranial hemorrhage
- 803.4 Closed with intracranial injury of other and unspecified nature
- 803.5 Open without mention of intracranial injury
- 803.6 Open with cerebral laceration and contusion
- 803.7 Open with subarachnoid, subdural, and extradural hemorrhage
- 803.8 Open with other and unspecified intracranial hemorrhage
- 803.9 Open with intracranial injury of other and unspecified nature

**804 Multiple fractures involving skull or face with other bones**

Requires fifth digit. See beginning of section 800-804 for codes and definitions.

- 804.0 Closed without mention of intracranial injury
- 804.1 Closed with cerebral laceration and contusion
- 804.2 Closed with subarachnoid, subdural, and extradural hemorrhage
- 804.3 Closed with other and unspecified intracranial hemorrhage
- 804.4 Closed with intracranial injury of other and unspecified nature
- 804.5 Open without mention of intracranial injury
- 804.6 Open with cerebral laceration and contusion
- 804.7 Open with subarachnoid, subdural, and extradural hemorrhage
- 804.8 Open with other and unspecified intracranial hemorrhage
- 804.9 Open with intracranial injury of other and unspecified nature

**INTRACRANIAL INJURY, EXCLUDING THOSE WITH SKULL FRACTURE (850-854)*****Excludes:***

*intracranial injury with skull fracture (800-801 and 803-804, except .0 and .5)*  
*open wound of head without intracranial injury (870.0-873.9)*

*skull fracture alone (800-801 and 803-804 with .0, .5)*

Note: The description "with open intracranial wound," used in the fourth-digit subdivisions, includes those specified as open or with mention of infection or foreign body.

The following fifth-digit subclassification is for use with categories 851-854:

0 unspecified state of consciousness

1 with no loss of consciousness

2 with brief [less than one hour] loss of consciousness

3 with moderate [1-24 hours] loss of consciousness

4 with prolonged [more than 24 hours] loss of consciousness and return to pre-existing conscious level

5 with prolonged [more than 24 hours] loss of consciousness without return to pre-existing conscious level

Use fifth-digit 5 to designate when a patient is unconscious and dies before regaining consciousness, regardless of the duration of the loss of consciousness

6 with loss of consciousness of unspecified duration

9 with concussion, unspecified

## **850 Concussion**

### **Includes:**

*commotio cerebri*

### **Excludes:**

*concussion with:*

*cerebral laceration or contusion (851.0-851.9)*

*cerebral hemorrhage (852-853)*

*head injury NOS (959.01)*

### **850.0 With no loss of consciousness**

Concussion with mental confusion or disorientation, without loss of consciousness.

### **850.1 With brief loss of consciousness**

Loss of consciousness for less than one hour

### **850.2 With moderate loss of consciousness**

Loss of consciousness for 1-24 hours

### **850.3 With prolonged loss of consciousness and return to pre-existing conscious level**

Loss of consciousness for more than 24 hours with complete recovery

### **850.4 With prolonged loss of consciousness, without return to pre-existing conscious level**

### **850.5 With loss of consciousness of unspecified duration**

### **850.9 Concussion, unspecified**

## **851 Cerebral laceration and contusion**

Requires fifth digit. See beginning of section 850-854 for codes and definitions.

### **851.0 Cortex (cerebral) contusion without mention of open intracranial wound**

- 851.1 Cortex (cerebral) contusion with open intracranial wound**
- 851.2 Cortex (cerebral) laceration without mention of open intracranial wound**
- 851.3 Cortex (cerebral) laceration with open intracranial wound**
- 851.4 Cerebellar or brain stem contusion without mention of open intracranial wound**
- 851.5 Cerebellar or brain stem contusion with open intracranial wound**
- 851.6 Cerebellar or brain stem laceration without mention of open intracranial wound**
- 851.7 Cerebellar or brain stem laceration with open intracranial wound**
- 851.8 Other and unspecified cerebral laceration and contusion, without mention of open intracranial wound**

Brain (membrane) NOS

- 851.9 Other and unspecified cerebral laceration and contusion, with open intracranial wound**

**852 Subarachnoid, subdural, and extradural hemorrhage, following injury**

Requires fifth digit. See beginning of section 850-854 for codes and definitions.

*Excludes:*

*cerebral contusion or laceration (with hemorrhage) (851.0-851.9)*

- 852.0 Subarachnoid hemorrhage following injury without mention of open intracranial wound**

Middle meningeal hemorrhage following injury

- 852.1 Subarachnoid hemorrhage following injury with open intracranial wound**

- 852.2 Subdural hemorrhage following injury without mention of open intracranial wound**

- 852.3 Subdural hemorrhage following injury with open intracranial wound**

- 852.4 Extradural hemorrhage following injury without mention of open intracranial wound**

Epidural hematoma following injury

- 852.5 Extradural hemorrhage following injury with open intracranial wound**

**853 Other and unspecified intracranial hemorrhage following injury**

Requires fifth digit. See beginning of section 850-854 for codes and definitions.

- 853.0 Without mention of open intracranial wound**

Cerebral compression due to injury

Intracranial hematoma following injury

Traumatic cerebral hemorrhage

- 853.1 With open intracranial wound**

**854 Intracranial injury of other and unspecified nature**

*Includes:*

injury:

brain NOS  
cavernous sinus  
intracranial

**Excludes:**

*any condition classifiable to 850-853  
head injury NOS (959.01)*

**854.0 Without mention of open intracranial wound**

**854.1 With open intracranial wound**

**997.0 Nervous system complications**

**997.00 Nervous system complication, unspecified**

**997.01 Central nervous system complication**

Anoxic brain damage  
Cerebral hypoxia

**Excludes:**

*Cerebrovascular hemorrhage or infarction (997.02)*

**997.02 Iatrogenic cerebrovascular infarction or hemorrhage**

Postoperative stroke

**997.09 Other nervous system complications**

**436 Acute, but ill-defined, cerebrovascular disease**

Apoplexy, apoplectic:

NOS

attack

cerebral

seizure

Cerebral seizure

Cerebrovascular accident [CVA] NOS

Stroke

**Excludes:**

*any condition classifiable to categories 430-435  
postoperative cerebrovascular accident (997.02)*

Source: International Code of Diseases (ICD-9-CM) 2004

## What does the ABI Waiver eligibility now look like?

### Case Scenario

DSPD Eligibility Determination on Acquired Brain Injury and Related Conditions:

Please note that the below described person is being reviewed to identify if she continues to meet eligibility criteria for the ABI Waiver under the new Waiver eligibility regulation from 07/01/2004. The below case is fictional, but incorporates all areas that need to be identified to determine eligibility.

**Issue:** Is Elaine eligible for the Home and Community-Based Waiver for Individuals With Acquired Brain Injuries (State Implementation Plan effective July 1, 2004).?

We did not consider which waiver (ABI or DD/MR) would be most appropriate to meet Elaine's needs. We did not consider how her disability is best clinically conceptualized for planning and providing supports. We did not consider how this decision might affect her Medicaid medical eligibility or other requirements. This is simply an eligibility issue.

**Recommendation:** Elaine is not eligible for the Home and Community-Based Waiver for Individuals With Acquired Brain Injuries (State Implementation Plan effective July 1, 2004).

We do not question any of the ABI Waiver eligibility requirements except, Elaine had a severe brain injury at age 17 years and she meets the federal definition of "Related Condition."

As of July 1, 2004 the ABI Waiver requires that the person not meet the definition of related condition in the Code of Federal Regulations (CFR) to be eligible.

**Section 1915(c) Waiver Format 4. b. iii. This waiver is not available to individuals who have mental retardation or other related conditions as defined in 42CFR483.102(b)(3) and 42CFR435.1009.**

In the review, we considered her age at the time of her brain injury, the severity of the injury, her overall intellectual functioning, adaptive behavior deficits, and services/support needs as well as her functional limitations. The following are our conclusions with information from the CFR in quotes:

1. Elaine has a "severe, chronic disability"
2. Elaine's disability "is attributable to-" a traumatic head injury as a result of an all-terrain vehicle accident in 1980.
3. Elaine's traumatic head injury meets the definition of "any other condition, other than mental illness, found to be closely related to mental retardation..."  
Traumatic head injury/acquired brain injury is one of the common direct causes of Mental Retardation.
4. Elaine's "condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons"

Results of the Neuro Psychological Evaluation completed by Dr. Franken in 1999 indicated an FSIQ = 65.

Diagnostic and Statistical Manual of Mental Disorders – Forth Edition (DSM-IV 1994)

"Significantly subaverage intellectual functioning is defined as an IQ of about 70 or below (approximately 2 standard deviations below the mean). It should be noted that there is a measurement error of approximately 5 points in assessing IQ, although this may vary from instrument to instrument (e.g., a Wechsler IQ of 70 is considered to represent a range of 65 –75). Thus, it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior."

We are not suggesting Elaine be diagnosed with Mental Retardation, just that her general intellectual functioning is similar to that of mentally retarded persons.

The DSM-IV also addresses the requirement for adaptive behavior deficits used in diagnosing Mental Retardation. "Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure, health, and safety."

Elaine's record documents deficits in 5 (self-care; home living, self-direction; community resources; and social/interpersonal skills) of these areas of adaptive behavior.

We are not suggesting Elaine be diagnosed with Mental Retardation, just that her impairment of adaptive behavior is similar to that of mentally retarded persons.

1. Elaine "requires treatment or services similar to those required for these persons;" as she requires supervision and individually designed and implemented skill training programs and behavioral programming to address broad deficits in the above listed major life areas. Her special needs in treatment or service related to the cause of her disability do not distinguish this as different from Mental Retardation. Brain injury is just one of the many causes of Mental Retardation that require special considerations in treatment or services.
2. Elaine's condition meets the requirement: "It is manifested before the person reaches age 22;" as her accident occurred at age 17 years.
3. Elaine's condition meets the requirement: "It is likely to continue indefinitely;" as her present condition has persisted for several years and is expected to be lifelong.
4. Elaine's condition has resulted in "substantial functional limitations in three or more of the following areas of major life activity: "Elaine's record is clear in documenting substantial functional limitations in (3) Learning, (5) Self-direction, and (6) Capacity for independent living. There is also documentation of limitations in (1) Self-care and (2) Understanding use of language.

The following assessments and documents were used during the review:

1. DSPD Eligibility Screening Committee Referral Summary by Elaine's Support Coordinator
2. DSPD Brain Injury Waiver Intake, Screening and Assessment Form dated 07-28-02
3. Brain Injury Social Histories dated 10-08-02 and 10-28-03
4. Hospital Discharge Summary
5. Neuro Psychological Evaluation completed by Dr. Franken dated 10-01-99

## **Form 19B “Eligibility for Acquired Brain Injury Services.”**

Form 19B refers to other documentation and assessments. Form 19B is thought to be a checklist for the ABI Eligibility Determination Process to ensure that the necessary documents are aligned.

You will find further information on the following:

- “Intake Screening and Assessment Form in Module IV- “Looking Closer-Brain Injury Comprehensive Intake Screening and Assessment Form and Manual.”
- Neuro./Psychiatric Evaluation in Module V- “ The Impact- Neurological Assessments.”

[See Form 19B](#)

## **Form 817B “Home and Community- Based Services Waiver- Level of Care Determination- Acquired Brain injury.”**

The form 817b is an eligibility form used for data entry and documenting an individual's diagnosis and eligibility for Home and Community-Based Waiver Services.

[See Form 817B](#)